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To: Field Office Managers

From: State Director

Subject: Updated Environmental Assessment (EA), Categorical Exclusion (CE), and Documentation of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy (DNA) Templates, Updated List of Critical Elements of the Human Environment in Bureau of Land Management (BLM) NEPA Handbook (H-1790-1) and EA-Level Guidance

The Colorado State Office (CSO) conducted a statewide NEPA compliance evaluation during FY03. During the evaluation, many suggestions on ways to improve Colorado's NEPA process were made. The following items are a result of this process:

- 1) Updated EA, CE, and DNA Templates
- 2) Updated List of the Critical Elements of the Human Environment in H-1790-1
- 3) EA-Level Guidance

1) Updated EA, CE, and DNA Templates

The changes to the templates are a reflection of the feedback we received from both the Field Offices (FO) and CSO. They also provide additional direction and guidance for compliance with new Executive Orders (EOs) and Rules and Regulations, and changes to the Department Manual regulations (516 DM 1-7) and the Bureau's NEPA Handbook (H-1790-1).

Each FO should be using the new templates at the beginning of FY04. The templates are included as attachments and can be modified to reflect each FO data (EA-Attachment-1, CE-Attachment-2, and DNA-Attachment-3).

## 2) Updated list of the Critical Elements of the Human Environment

The following updated list of the Critical Elements of the Human Environment (Attachment-4) replaces the list contained in Appendix 5 of the NEPA Handbook (H-1790-1). Critical Elements are those elements that at a minimum must be addressed in all EAs and Environmental Impact Statements (EISs). This appendix has not been reissued since 1988.

Since then, there have been additions and refinements to the list authorized by legislation and EOs. Additions since 1988 include: Environmental Justice; Invasive, Nonnative Species; and Migratory Birds. Water Quality, Surface and Ground, has been updated to make it clear that both surface and groundwater must be considered.

Migratory Birds is the newest Critical Element that must be addressed in Colorado. EO 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds,” defined the responsibility of federal agencies to protect migratory birds and their habitats. The intent of the EO was to strengthen migratory bird conservation by identifying and implementing strategies that promote conservation and minimize the take of migratory birds through consideration in land use decisions and collaboration with U.S. Fish and Wildlife Service (FWS). In order to ensure that environmental analyses of federal actions required by NEPA evaluate the effects of actions and agency plans on migratory birds, this Element has been added to the list of Critical Elements of the Human Environment. FO’s are directed to include in all future NEPA EAs and EISs and planning documents, consideration of migratory birds and their habitats in the Affected Environment and Environmental Consequences sections of these documents. In addition, appropriate consideration of migratory birds should also be incorporated into DNA reviews.

In Colorado, Soils, Vegetation, and Wildlife (Aquatic and Terrestrial), were included on the Critical Element list because of implementation of Colorado’s Standards for Public Land Health. These elements will be moved from the Critical Element list to the Non-Critical Element list. (See changes in attached EA Template). However, these elements still must be addressed in all EAs and EISs in order to address the impact of the activity on Colorado’s Standards for Public Land Health.

## 3) EA-Level Guidance

The following section provides clarification on specific sections of the EA and addresses questions that were raised by the FOs during the NEPA evaluation. The following guidance was derived from various NEPA guidance documents including the Departmental Manual regulations (516 DM 1-7) and the Bureau NEPA Handbook (H-1790-1). As a general reminder, both the Council on Environmental Quality (CEQ) and the Bureau advise that an EA not exceed 10-15 pages (excluding attachments and appendices).

a) Terminology: Use words “would” and “could” throughout the EA instead of “will” and “shall.” The latter two indicate that the decision has been made concerning the action.

b) Issues and Concerns: This section should specify any public or internal scoping issues that have been brought forward, or any issues that are driving the EA.

c) Need for the Proposed Action: For internal proposals, the need will most likely be to move from an existing resource condition toward achieving goals in your land use plan. For external proposals, the questions to answer are why is the proponent proposing the project, and why did the Bureau become involved? Avoid using any justification in this section. While this information might be useful, it should not be listed here.

d) Proposed Action: It is important to be as specific as possible when describing the quantifiable information of the proposed action, such as location, extent, timing, and duration. In addition, the design standards of the project, as well as the project specifications required for program specific elements, and the Standard Operating Procedures (SOPs) should be listed here or in an appendix if lengthy. FO NEPA coordinators should be reviewing the Proposed Action for all EAs upfront, in order to determine if enough detail is listed for a thorough interdisciplinary analysis.

e) This should be broken out into a separate section in the EA (see EA template). All reasonable alternatives should be considered and analyzed in the same detail as the proposed action. These include those that are practical or feasible from a technical and economic standpoint.

f) Alternatives Considered But Not Carried Forward: Include all alternatives suggested by the public (during scoping or through written correspondence), other agencies, and Interdisciplinary (ID) team members that were eliminated from detailed analysis, and briefly explain why. Potential reasons why an alternative would not be carried forward include: failure to meet the underlying need or purpose for taking the action; it is clearly unreasonable; it is technologically infeasible; it would cause unreasonable environmental harm; it requires assumptions that are remote or speculative; or it cannot be implemented.

g) Standards for Public Land Health: In January 1997, Colorado BLM approved the Standards for Public Land Health. These standards cover upland soils, riparian systems, plant and animal communities, threatened and endangered species, and water quality. Standards describe conditions needed to sustain public land health and relate to all uses of the public lands. Because a standard exists for these five categories, a finding must be made for each of them in the environmental analysis. These findings are located in specific elements in the EA (see EA template)

h) Critical and Non-Critical Elements: In the new EA template, the various elements have been broken out into three sections. The first section contains the Critical Elements that must be addressed in all EAs and EISs because they are subject to specified statutes, regulations, or EOs. The second section contains the Non-Critical Elements that must be addressed because they involve Standards for Public Land Health. The third section contains a table of the other possible Non-Critical Elements that could potentially be affected. In the table, one of the three

columns for each element will need to be checked. If the last column is checked, that element must be brought forward for analysis.

Each Element has been separated in the new EA template. FOs can combine certain elements based on the responsibilities of their staff such as: floodplains with riparian, or wildlife, aquatic with wildlife, terrestrial, or wilderness with wild and scenic rivers.

i) Affected Environment: If a Non-Critical Element is not going to be potentially affected, there is no need to describe it. The new EA template separates the Affected Environment from the Environmental Consequences with separate sub-headings. This provides a clear distinction for both reviewers and the public. The two sections must track with each other, thus if there is not much detail provided on the affected environment, there should not be a long discussion of impacts in the Environmental Consequences section.

j) Environmental Consequences: When discussing impacts, you should fully describe and quantify each impact to the extent possible (such as area of disturbance, duration, and the intensity), and focus your impact analysis in the form of direct, indirect, and cumulative impacts. Avoid using words such as significant, insignificant, adverse, beneficial, negative, and positive. A significance determination is made only in a Finding of No Significant Impact (FONSI) and never in an EA. NEPA requires that a disclosure of all impacts be documented. Bureau policy is to avoid attaching value judgment labels to impacts. What is adverse to one person or resource is often beneficial to another. This section should not be used for unsubstantiated opinions or descriptions of what the author thinks should be happening on the ground. Just state the facts.

k) Mitigation Measures: Mitigation measures are developed to alleviate or reduce impacts that have been identified in the impact analysis. Thus, they have to be tied to an impact identified in the Environmental Consequences section, and they must be technically and economically feasible.

l) Cumulative Impacts Summary: Bureau policy requires that cumulative impacts be addressed in all EAs. Even if there are no cumulative impacts, you must still address them with a brief statement to support the negative declaration in the new “Cumulative Impacts Summary” section of the EA. The following is an example statement: “All resource values have been evaluated for cumulative impacts. It has been determined that there would be no cumulative impacts...”

The following is a simplified version of the CEQ definition of cumulative impacts:

“Cumulative impacts are direct and indirect impacts that result from the proposed action or its alternatives when considered with other past, present, and reasonable foreseeable future actions of the Bureau and other agencies or private parties.”

In order to determine if cumulative impacts exist, they need to be analyzed in terms of the specific resource or ecosystem being impacted. When analyzing cumulative impacts, NEPA requires the Bureau to look beyond the proposed action and immediate project site. Points to remember include:

- Each impact will have different spatial (location) and temporal (time) limit
- Think about how far into the future and how far from the site of the activity you want to apply your analysis

- Impacts from other projects must overlap in time and location with the proposed action or alternatives to be included in the cumulative effects analysis

The analysis should include:

- Geographic area in which the impacts will occur (this will vary depending on the resource or issue)
- Direct and indirect impacts of the proposed action (and alternatives included in the analysis)
- Description of other past, present, and reasonably foreseeable future actions that have or can be expected to cause impacts in the geographic area. The challenging question is what constitutes a reasonably foreseeable action. Again, the specific resource or issue will determine how far into the future to look at impacts from other activities. Look at other possible activities on adjacent lands and attempt to draw a firm line between speculative and reasonably foreseeable actions. The key is to take a systematic approach and document your findings and rationale for your findings.
- Impacts predicted from No. 3
- Overall impact of No. 2 and 4

If cumulative impacts are expected, additional interdisciplinary analysis should occur to objectively determine the cumulative impacts. The description should define the limits and lay out the assumptions for the analysis. Additional information on cumulative impacts can be obtained from “Guidelines for Assessing and Documenting Cumulative Impacts” (BLM, 1994) and “Considering Cumulating Effects under NEPA” (CEQ, 1997). This is available from the CSO.

m). Monitoring: Monitoring needs should be identified for all NEPA actions. If monitoring is deemed unnecessary for an action, the following statement should be incorporated into the Decision Record (DR) of the EA: “No monitoring needs have been identified for this action.” Remember that if monitoring is committed to be in your DR, it becomes legally binding just as every other part of your DR.

The main purpose of NEPA related monitoring is to:

- 1). Evaluate the quality of the NEPA document
- 2). Ensure compliance with the NEPA decision
- 3). Measure the effectiveness of success of stipulations, mitigation measures, and project specifications
- 4). Evaluate the validity of NEPA decisions

n) Appendices or Attachments: This section may include the following items: maps, photographs, any visual enhancements as deemed necessary to help the reader, using charts, graphs, figures, tables, technical reports, etc. These documents should be referenced by page number and appendix or attachment number each time they are mentioned in the body of the EA.

o) References: This section should include an alphabetic list of all documents referenced in the body of the EA. You should use the parenthetical citations when referencing the sources.

Resource specialists should include a list of references at the time of submitting their EA input and analysis.

p) Administrative Record: The administrative record is the set of documents (such as papers, studies, data, references, maps, correspondence, computer runs, etc.) using formats such as paper, hard drive, floppy disk, etc. It serves as evidence that the Bureau understood the law applying to the decision, considered all the relevant factors, and made a reasoned choice.

It is especially important that you begin compiling an administrative record from the beginning of the EA process for more complex and controversial actions. FO specialists should also be made aware of what type of information must be part of the administrative record.

The following FWS memorandum contains the Department of Justice's (DOJ's) "Guidance to Federal Agencies on Compiling the Administrative Record" as an attachment:

<http://policy.fws.gov/library/m0063.html>. The DOJ guidance contains general information regarding what type of documents and materials to include in the administrative record.

The goal for a good administrative record is to reflect what the agency did and why it did it. It should reflect the process the agency used to arrive at its decision as well as what the decision was. It should reflect factors that support the decision and should reflect factors that are contrary to the decision and how the agency handled them.

The biggest mistake for an administrative record is omission. The biggest omission is usually a failure to explain action. When the basis for decisions is not explicitly disclosed by the agency, the court is free to draw its own conclusions. When a particular law or regulation requires the consideration of specific factors, the administrative record must reflect those factors and how they were considered. Omission of a single factor can be fatal to a decision.

q) Tiering: Tiering is used to prepare new, more specific or more narrow documents without duplicating relevant parts of previously prepared, more general, or broader documents.

In preparing EAs, the most common example of tiering is incorporating relevant portions of your RMP/EIS, or an EIS-level plan amendment (such as the 1991 Oil and Gas Leasing and Development EIS) into a specific section of the EA (such as the Affected Environment section for a specific resource).

In the new environmental document, you must identify the document to which you are tiering to and provide a brief summary of the relevant portions of the document to which you are tiering. This is necessary for understanding the relationship between the two documents.

If you have any questions, please contact Joe Stout, Planning and NEPA Coordinator, at 303-239-3747.

Signed by  
Lynn E. Rust  
Acting State Director

Authenticated by  
Don Snow  
EMS Operator

#### 4 Attachments

- 1-EA Template (6pp)
- 2-CE Template (3pp)
- 3-DNA Template (4pp)
- 4-Critical Elements of Critical Environment (2 pp)